

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSEPH SHERESHEVSKY (formerly known as Joseph Heller) and ELKA SHERESHEVSKY,

Plaintiffs,

-against-

RAN NIZAN,

Defendant.

07 Civ. 09814 (JFK)

ECF Case

**AFFIDAVIT OF PETER M. SPETT IN
SUPPORT OF DEFENDANT'S MOTION TO DISMISS**

STATE OF NEW YORK

)

: SS:

COUNTY OF NEW YORK

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PETER M. SPETT, being duly sworn, deposes and says:

1. I am an attorney admitted to the bar of this Court and principal of the Law Office of Peter M. Spett, attorneys for the named defendant in this action. I am fully familiar with the facts and circumstances set forth in this affidavit.
2. In a hearing before Judge Rakoff on July 8, 2008 in Jassry Properties LLC v. Nizan, 08 Civ. 00536 (JSR) (the “Jassry Action”), Robert Frederic Martin, counsel for the plaintiffs in this case, stated that the complaint in that action should have been filed with the Court as related to this action. The complaint in that case is being brought against defendant on behalf of Jassry Properties LLC, a Virginia limited liability company in which the plaintiffs herein claim to be members. A copy of the complaint in the Jassry Action is attached as Exhibit A hereto.
3. Defendant Ran Nizan has also moved to dismiss the Jassry Action for lack of personal jurisdiction (as well as on other grounds).

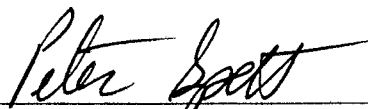
4. In the Jassry Action, plaintiff requested leave to amend its complaint, and Judge Rakoff has ordered plaintiff to amend its complaint by July 29, 2008.

5. Judge Rakoff has also scheduled an evidentiary hearing on August 6, 2008 to determine defendant's motion to dismiss for lack of personal jurisdiction in the Jassry Action, and has reserved decision on the rest of defendant's motion to dismiss that action pending plaintiff's amendment of its complaint.

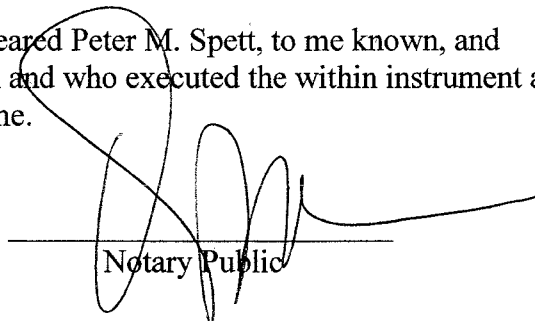
6. For the reasons set forth in defendant's Memorandum of Law, Reply Memorandum of Law, and affidavit of defendant Ran Nizan sworn to on June 21, 2008, defendant's motion to dismiss this action should be granted.

7. In the unlikely event that defendant's motion cannot be solely determined on the basis of motion papers, defendant respectfully requests that the Court stay discovery and all proceedings in this action until such time as Judge Rakoff renders a decision on defendant's motion to dismiss the related Jassry Action. Defendant also respectfully requests that this Court give the evidentiary hearing and determination in the related Jassry Action due consideration before permitting this case to proceed any further.

Dated: July 14, 2008


Peter M. Spett

On July 14, 2008, before me personally appeared Peter M. Spett, to me known, and known to me to be the same person described in and who executed the within instrument and he acknowledged to me that he executed the same.


Notary Public
DIGNA D. AULI
Notary Public, State of New York
No. 01AU6122255
Qualified in Westchester County
Commission Expires Feb. 7, 2009